

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

§

Plaintiff,

§

VS.

Civil Action No. H-05-1155

2002 BMW, Model X-5

§

Defendant.

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UNITED STATES' MOTION FOR ORDER OF VOLUNTARY DISMISSAL
PURSUANT TO RULE 41(a)(2), FEDERAL RULES OF CIVIL PROCEDURE

The United States moves for a voluntary dismissal without prejudice under Rule 41(a)(2) of the Federal Rules of Civil Procedure.

In this in rem forfeiture proceeding, Civil Action No. H-05-1155, the

Claimants Minh “Jeff” Huynh and Nu “Cindy” Huynh contend that the notice of forfeiture for the 2002 BMW, Model X-5, Defendant in Rem that was sent by the U.S. Drug Enforcement Administration was not in compliance with the 60-day deadline as provided in 18 U.S.C. § 983(a)(1)(A)(i). Further, they assert that because of this noncompliance, they are entitled pursuant to 18 U.S.C. § 983(a)(1)(F) to the return of the 2002 BMW, Model X-5, Defendant in Rem.

The United States does not dispute that the notice of given by DEA did not strictly comply with 18 U.S.C. § 983(a)(1)(A)(i). While the Government may have

the right to pursue the forfeiture even if the vehicle is ordered released to the Claimants, the United States elects to voluntarily non-suit this action without prejudice to the right of the Government to commence a forfeiture proceeding at a later time under 18 U.S.C. § 983(a)(1)(F).

In the related consolidated case, the previously seized jewelry has been returned to the claimants and the Drug Enforcement Administration has been requested to return the remaining seized documents.

Accordingly, the United States move under Rule 41(a)(2) of the Federal Rules of Civil Procedure for an order of voluntary dismissal without prejudice to the United States' right to pursue a forfeiture action against this Defendant in Rem at a later time as provided by 18 U.S.C. § 983(a)(1)(F).

Respectfully submitted,
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